

FILED

07/21/2023

Clerk of the
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs July 3, 2023

IN RE ANTHONY N.

Appeal from the Circuit Court for Bedford County
No. 19460 M. Wyatt Burk, Judge

No. M2022-01360-COA-R3-JV

A juvenile appeals the decision to re-commit him to DCS custody for treatment and services. We conclude that this appeal is moot in light of post-judgment facts.

Tenn. R. App. P. 3 Appeal as of Right; Appeal is Dismissed and Case Remanded

W. NEAL MCBRAYER, J., delivered the opinion of the court, in which THOMAS R. FRIERSON II and KENNY W. ARMSTRONG, JJ., joined.

Donna Orr Hargrove, District Public Defender, and James R. Tucker, Jr., Assistant Public Defender, for the appellant, Anthony N.

Jonathan Skrmetti, Attorney General and Reporter, Andrée Sophia Blumstein, Solicitor General, Jonathan H. Wardle, Senior Assistant Attorney General, for the appellee, Tennessee Department of Children’s Services.

MEMORANDUM OPINION¹

I.

Anthony N. first appeared in juvenile court at age 13. The court adjudicated him delinquent after he pleaded guilty to charges of attempted burglary and vandalism.

Three years later, Anthony was charged with aggravated assault and carrying a weapon on school property. The aggravated assault charge was retired, but he pleaded guilty to carrying a weapon on school property. The juvenile court again adjudicated him

¹ Under the rules of this Court, as a memorandum opinion, this opinion may not be published, “cited[,] or relied on for any reason in any unrelated case.” TENN. CT. APP. R. 10.

delinquent. This time, the court found that it was contrary to Anthony's welfare to remain in his parents' custody because they were unable to control his delinquent behavior. So it awarded temporary custody to the Tennessee Department of Children's Services. Tenn. Code Ann. § 37-1-131(a)(4)(A) (Supp. 2022). Anthony received medical treatment, counseling, and other services while in DCS custody.

Six months later, DCS recommended home placement with continued supervision. *Id.* § 37-1-137(b)(1) (Supp. 2022). Home placement status was subject to revocation if Anthony violated the rules of aftercare. *See id.* § 37-1-137(d)-(f). Among other things, Anthony was required to obey all laws and court orders, to get permission before leaving home, and to abide by his curfew. The juvenile court approved the home placement. *Id.* § 37-1-137(c)(1)(C). After a thirty-day trial home visit, Anthony's mother obtained full legal custody.

But Anthony's home placement was short-lived. On August 19, 2022, his DCS supervisor filed a petition in juvenile court charging Anthony with multiple aftercare violations. *Id.* § 37-1-137(d)(1)(A). The petition alleged that Anthony removed his ankle monitor, left home without permission with another youth who was on aftercare, stole a car, and fled to another city. The juvenile court found beyond a reasonable doubt that Anthony was guilty of an aftercare violation. *Id.* § 37-1-137(e). So the court adjudicated him delinquent and awarded DCS temporary custody. Anthony appealed the disposition to circuit court. *Id.* §§ 37-1-137(f)(4), -159 (Supp. 2022).

After a *de novo* hearing, the circuit court found that Anthony violated multiple rules of aftercare. Although he also committed new offenses, he had not been adjudicated delinquent based on those offenses. *See id.* § 37-1-137(f)(2). Even so, the court found clear and convincing evidence that Anthony was in imminent risk of danger to his health or safety. He was "off of his medications," which adversely affected his decision making. And his mother was unable to control his delinquent behavior. The court was concerned that "without immediate intervention" Anthony's conduct would become "even more egregious." It was undisputed that Anthony was in immediate need of medication and specialized behavioral care and training. And the court found clear and convincing evidence that the necessary medication and services were immediately obtainable only if Anthony was placed in DCS custody. So the court awarded temporary custody to DCS. *See id.* § 37-1-137(f)(3)(A).

II.

Anthony raises one issue on appeal: whether the circuit court erred in finding that there was clear and convincing evidence that he needed specific treatment and services that were only available if he was in DCS custody. In his view, the evidence fell short. So he asks us to instruct the circuit court to enter an order returning him to home placement. *See id.*

DCS contends that we should dismiss this appeal as moot given post-judgment facts. *See* TENN. R. APP. P. 14. With court approval, DCS may discharge a child and terminate supervision. Tenn. Code Ann. § 37-1-137(g)(1). DCS has submitted documentation indicating that it discharged Anthony and closed his case effective April 21, 2023. And it asks us to consider this written notification of discharge as a post-judgment fact. We have the discretion to consider post-judgment facts that are “capable of ready demonstration, affecting the positions of the parties or the subject matter of the action such as mootness.” TENN. R. APP. P. 14(a). Anthony did not object to DCS’s motion. Given these circumstances, we exercise our discretion to grant the motion.

For this Court to render an opinion, we must be faced with a “genuine and existing controversy.” *McIntyre v. Traughber*, 884 S.W.2d 134, 137 (Tenn. Ct. App. 1994). A case must remain justiciable from the time it is filed until the moment of final appellate review. *Norma Faye Pyles Lynch Fam. Purpose LLC v. Putnam Cty.*, 301 S.W.3d 196, 203-04 (Tenn. 2009). A moot case is no longer justiciable because it “has lost its character as a present, live controversy” and “no longer serves as a means to provide relief to the prevailing party.” *McIntyre*, 884 S.W.2d at 137. Mootness can result from a “court decision, acts of the parties, or some other reason occurring after commencement of the case.” *Norma Faye Pyles Lynch Fam. Purpose LLC*, 301 S.W.3d at 204. Determining whether a case is moot presents a question of law. *All. for Native Am. Indian Rts. in Tenn., Inc. v. Nicely*, 182 S.W.3d 333, 338-39 (Tenn. Ct. App. 2005).

We conclude that this appeal is moot. Anthony challenges the court’s decision to re-commit him to DCS custody. But since this appeal was filed, DCS has discharged him and closed his file. Tenn. Code Ann. § 37-1-137(g)(1). We can provide him with no greater relief than what he has already received. *See McIntyre*, 884 S.W.2d at 137-38 (explaining that an appeal challenging the conditions of parole was moot because the appellant had been released from custody).

The parties have not articulated any exceptional circumstances that would allow us to reach the merits of this appeal. In our discretion, we may consider a moot issue if (1) it has “great public importance or affects the administration of justice”; (2) “the challenged conduct is capable of repetition and evades judicial review”; (3) there are “collateral consequences”; or (4) “a litigant has voluntarily ceased the challenged conduct.” *City of Memphis v. Hargett*, 414 S.W.3d 88, 96 (Tenn. 2013). Based on our review of this record, none of these exceptions to the mootness doctrine apply. *See Hooker v. Haslam*, 437 S.W.3d 409, 417 (Tenn. 2014) (instructing appellate courts to consider whether to apply one of the recognized exceptions to the mootness doctrine).

III.

This appeal is dismissed as moot. We remand for further proceedings consistent with this Court's opinion. *See Hudson v. Hudson*, 328 S.W.3d 863, 866 (Tenn. 2010); *McIntyre*, 884 S.W.2d at 138.

s/ W. Neal McBrayer
W. NEAL McBRAYER, JUDGE